

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 261 of 1999

WITH

APPEAL FROM ORDER No.573 of 1998

WITH

CIVIL REVISION APPLICATION No.1026 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KAVASJI ADALJI ILAVIA

Versus

ACHARBHAI SAGA HAJI SAMA

Appearance:

A.O.261 of 1999:

Mr.P.G.Desai, with Mr.Mrugen Purohit for the appellants.
Mr.B.S.Patel for the respondent.

A.O.573 of 1998:

Mrs.Ketty A.Mehta for the appellant.

Mr.P.G.Desai, with Mr.Mrugen Purohit for the
respdts.no.1& 3.

C.R.A.No.1026 of 1999:

Mr.P.G.Desai with Mr.Mrugen Purohit for the

petitioners.

Mr.B.S.Patel for respondent no.1.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/02/2000

ORAL JUDGEMENT

1. This Court earlier decided Appeal From Order No. 261 of 1999 by judgment and order dated 20.11.1999. However, thereafter the said judgment and order was recalled by an order dated 22.11.1999 passed in Misc. Civil Application No. 2445 of 1999 and the said Appeal From Order No.261 of 1999 was restored to file and directed to be heard along with Appeal From Order No. 573 of 1998. As far as Civil Revision Application No. 1026 of 1999 is concerned, it is also ordered to be placed along with Appeal From Order No.261 of 1999. With the consent of the parties, all the matters are heard together. Since no orders of admission of Appeal From Order No. 261 of 1999 and Civil Revision Application No.1026 of 1999 are passed, with the consent of learned advocates appearing for the respective parties, Appeal From Order No. 261 of 1999 is admitted. Notice of service is waived by Mr.B.S.Patel.

Similarly, Rule is issued in Civil Revision Application No.1026 of 1999 and service of Rule is waived by Mr.B.S.Patel for the respondents.

2. The appellants of Appeal From Order No. 261 of 1999 are challenging the judgment and order dated 5.5.1999 rendered by the learned Civil Judge(Senior Division) Bharuch below Ex. 5 in Special Civil Suit No. 243 of 1998. Similarly, the said appellants, in Civil Revision Application NO. 1026 of 1999 are challenging the judgment and order dated 23.6.1999 rendered by the learned Civil Judge, Senior Division, Bharuch below Ex. 64 in Special Civil Suit No. 342 of 1999. The appellant of Appeal From Order No. 573 of 1998 -Laxmanbhai Khodabhai is challenging the judgment and order dated 11.11.1998 passed below Ex. 5 in Special Civil Suit No. 108 of 1998 rendered by the learned Civil Judge, Senior Division, Bharuch.

3. The present case has a chequered history and, therefore, it is necessary to narrate certain facts.

There is a land bearing survey no.65 paiki admeasuring 2 A.20 G. and the land bearing survey no. 75 paiki admeasuring 0-88-00 H.R.A., situated at village Netrang, Taluka Valia, District Bharuch. The said land

originally belonged to one Ratansha Hormanji who was the sole owner of the aforesaid agricultural land. It is the case of the appellant of Appeal From Order No. 573 of 1998 -Laxmanbhai Khodabhai that he is the tenant of the aforesaid land in pursuance of the rent note dated 1.12.1985 executed by deceased Ratansha Hormanji in his favour and was in possession of the land in question in pursuance of the possession receipt issued by the deceased Ratansha in his favour. It is, however, the case of the appellants of Appeal From Order No. 261 of 1999 that the said Ratansha did not have any issue and, therefore, by executing a registered will dated 4.4.1987, the suit lands were bequeathed to Kavasji Adalji. It is their further case that on the death of said Ratansha on 10.7.1987, the land in question was bequeathed to appellant no.1 and the entry was mutated in revenue record at serial no. 1150 dated 15.7.1987 and the said entry was later on certified by the revenue authorities and, therefore, they are in peaceful occupation and cultivation of the said land.

4. It appears that one Abdul Shakur Abdulgani Pathan was trying to interfere with the possession of the aforesaid land in question and, therefore, with a view to protect the possession and to restrain the said Abdul Shakur Abdulgani Pathan from entering into the land in question, the appellant no.1 Kavasji instituted the suit being Regular Civil Suit No. 14 of 1988 in the Court of learned Civil Judge, Junior Division, Valia and also prayed for temporary injunction on 11.6.1988. The learned trial judge granted ad-interim relief vide order dated 26.3.1998 and continued the said relief till the disposal of the suit. The said relief was granted on 8.3.1989. It further appears that during the pendency of the said suit, despite injunction being operative in the said suit, Laxman Khodabhai, appellant in Appeal From Order No. 573 of 1998 instituted a suit being Special Civil Suit No. 82 of 1989 in the Court of learned Civil Judge, Senior Division, Bharuch on 6.5.1989 for permanent injunction restraining the appellant no.1 Kavasji from disposing of the suit property by way of sale, mortgage, gift, transfer or alienation. Initially, the learned judge granted ex-parte interim relief as prayed for on 6.5.1989. However on 21.9.1989, the learned judge rejected Ex. 5 application. Against the said order, Appeal From Order before this Court was preferred by said Laxmanbhai Khodabhai and the same was withdrawn. It appears that on 9.10.1989, the said Laxmanbhai, after having failed to obtain the ad-interim relief, sought permission to withdraw the said suit being Special Civil Suit No. 82 of 1989 with a view to file a fresh suit.

The learned 2nd Joint Civil Judge, Senior Division, Bharuch, on the same day i.e. on 9.10.1989, granted permission to file a fresh suit on the same cause of action. The said Laxmanbhai Khodabhai thereafter filed another suit being Special Civil Suit No. 175 of 1989 in the Court of learned Civil Judge, Senior Division, Bharuch for permanent injunction restraining the appellant no.1 -Kavasji from disturbing his possession of the suit land. He also prayed for a permanent injunction restraining the said Kavasji from selling or alienating the land in question. The learned trial judge, initially granted injunction as prayed for and continued the same till the said suit came to be finally decided. It appears that since the subject matter of both the suits being Regular Civil Suit No. 14 of 1988 filed by appellant no.1 Kavasji and Special Civil Suit No. 175 of 1989 filed by Laxman Khoda was of the same land, both the suits were consolidated. Regular Civil Suit No. 14 of 1988 was re-numbered as Regular Civil Suit No. 580 of 1991 and both the suits were tried together.

5. The learned trial judge, by his judgment and order dated 9.12.1996, dismissed Special Civil Suit No. 175 of 1989 and decreed the Regular Civil Suit No. 580 of 1991 filed by the appellant no.1 Kavasji. A specific finding has been recorded by the learned trial judge that Laxman Khoda was not in possession of the land and the rent note was found to be bogus, concocted and unreliable. The said Laxmanbhai Khodabhai challenged the said judgment and order passed in both the suits by filing two appeals being Regular Civil Appeals No. 2 of 1997 and 3 of 1997 before the learned District Judge, Bharuch. On 3.1.1997, the learned Joint District Judge, Bharuch, passed an order directing the parties to maintain status quo. In the application for temporary injunction filed by the said Laxman Khoda, he prayed for restraining the respondents from disturbing his possession of the suit property during the pendency of and till the final disposal of the appeal. The said two appeals are still pending before the lower appellate court.

6. On 16.4.1998, a registered sale deed was executed between the appellant no.1- Kavasji and appellants no. 2 and 3 of Appeal From Order No. 261 of 1999, whereby the appellants no. 2 and 3 paid the entire sale consideration of the suit land of Rs. 4 lacs to the appellant no.1. After having lost in the earlier suits, the said Laxmanbhai Khodabhai filed another Special Civil Suit No. 108 of 1998 against the appellants of Appeal From Order No. 261 of 1999 for quashing and setting

aside the sale deed dated 16.4.1998 as illegal, null and void and also prayed for permanent injunction restraining the appellants from transferring, selling or alienating the suit property in favour of anybody. He also prayed for a specific performance on the ground that he was having the first right to purchase the land in question.

7. After hearing the parties, the learned 2nd Joint Civil Judge, Senior Division, Bharuch, on 11.11.1998, rejected the application Ex.5 by holding that the said Laxmanbhai Khodabhai was never in possession of the suit property and that he had no right to purchase the suit property and that no injunction could be granted. Against the said order dated 11.11.1998, the said Laxmanbhai Khodabhai preferred Appeal From Order No. 573 of 1998. Along with the said Appeal From Order, an application for injunction being Civil Application No. 11098 of 1998 was filed. On 27.11.1998, this Court adjourned the hearing to 3.12.1998 and also extended the ex-parte ad-interim order granted by the trial court till then. On 11.12.1998, this Court passed the following order:

"The learned advocate for the caveator is absent even in the second sitting. Ad-interim relief in terms of para 2(A) till further orders."

It further appears that the appellant no.1- Kavasji filed an application being Misc. Civil Application No. 2811 of 1998 and prayed for recalling the order passed in Civil Application No. 11098 of 1998 in Appeal From Order No. 573 of 1998 dated 11.12.1998 and to fix the said Civil Application for hearing by narrating the circumstances for not remaining present at the time of hearing of the Civil Application for stay. This Court, on 15.4.1999, ordered to list the Appeal From Order for final hearing in the first week of May 1999.

8. One more suit being Special Civil Suit No. 243 of 1999 was filed on 17.11.1998 by one Acharbhai Saga Haji Sama, the respondent in Appeal From Order No. 261 of 1999 against the appellants of the said Appeal From Order in the Court of learned Civil Judge, Senior Division, Bharuch wherein it was pointed out that the appellant no.1 had entered into an agreement of sale with him on 12.12.1997 and in pursuance of the same, he has paid Rs. 50,000/- in cash to him. Therefore, the said suit was for specific performance of contract and for further relief of declaration that the sale deed dated 16.4.1998 executed by the appellant no.1 in favour of appellants no. 2 and 3 in Appeal From Order No. 261 of

1999 be set aside and for further relief restraining the appellant from taking further action pursuant to the sale deed dated 16.4.1998. On the application Ex. 5 preferred by the said respondent Acharbhai, the trial court passed an order of status quo on 27.12.1998. On 5.5.1999, the learned Civil Judge, Senior Division, Bharuch allowed the said application Ex. 5 and granted injunction restraining the appellant from transferring or alienating the said land in question in any manner whatsoever by mortgage, sale or in any manner and further restraining the appellant from plotting the said land and taking further steps pursuant to the document of sale dated 16.4.1998 and creating third party interest in the suit property. The said order was made operative till the final disposal of the suit. It appears that after the document of sale dated 16.4.1998 was executed, the lands in question were permitted to be converted into N.A. on 19.1.1999. The appellants have challenged the said order passed below Ex. 5 dated 5.5.1999 by filing Appeal From Order No. 261 of 1999.

9. It appears that on 4.6.1999, the said Achar Saga Haji Sama filed an application Ex. 64 before the learned trial judge wherein he prayed for directions to comply and abide by the order passed in respect of the disputed land and to restrain the appellant from carrying out the construction and also to provide police protection to implement the order passed by the Court. He also prayed to pass an order attaching the land in dispute and to demolish the construction carried out by the appellants upon the said disputed land in the interest of justice. The learned trial judge, by an order dated 23.6.1999, allowed the said application. The concluding portion of the said order reads as under:-

"It has been directed that the defendants are restrained from carrying out construction proceedings in the disputed land and in spite of that, if the defendants continue the construction work, then this application is allowed to the extent of getting police protection for the prevention of violating the order passed below Ex.5"

The appellants have challenged the said order passed below Ex. 5 by filing Civil Revision Application No. 1026 of 1999 and as stated above, is ordered to be heard along with the Appeals From Order.

17.2.2000:

10. The aforesaid facts would reveal that the parties

have initiated many proceedings against each other and the courts have virtually settled their disputes. Mrs.K.A.Mehta, learned advocate appearing for the appellant in Appeal From Order No. 573 of 1998 Laxmanbhai Khodabhai contended that the appellant was the tenant of the land in pursuance of the rent note dated 1.12.1985 executed by deceased Ratansha and he was put in possession and the possession receipts were also issued and, therefore, he is in possession of the suit property and, therefore, he is entitled to obtain relief restraining the respondents of the said Appeal From Order from transferring the suit land in favour of any other person. It was further submitted by Mrs.Mehta that even if the suit being Special Civil Suit No. 175 of 1989 filed by Laxmanbhai Khodabhai was dismissed on 9.12.1996 by the trial court, he has obtained the order of status quo in Regular Civil Appeal No. 2 of 1997 from the learned District Judge, Bharuch and, therefore, during the pendency of the said appeal, the respondent no.1 is not entitled to sell the suit property in favour of respondents no. 2 and 3. It is in these circumstances that he has preferred Special Civil Suit No. 108 of 1998 against the respondents for setting aside the sale deed dated 16.4.1998 entered into by the present respondent no.1 in favour of present respondents no. 2 and 3 as being illegal, null and void and contrary to his right of first purchase as a tenant. He has, therefore, filed the present suit being Special Civil Suit No. 108 of 1998 restraining the respondents no. 2 and 3 from further transferring and/or creating right of third party over the suit land by mortgage, sale or in any other manner. In support of this submission, Mrs.Mehta has placed reliance on the decision of the Supreme Court in the case of Bai Dosabai Vs. Mathurdas Govinddas, AIR 1980 SC 1334 and Nirmala Bala Dasi Vs. Sundersan Jana, AIR 1980 Calcutta 258. Mrs. Mehta further submitted that the reliefs claimed in Special Civil Suit No. 175 of 1989 and Special Civil Suit No. 108 of 1998 are entirely different and, therefore, there was no question of res judicata arising in the facts of the present case. In the submission of Mrs. Mehta, the finding of the lower court that the points raised in the present suit and the points raised in earlier Special Civil Suit No. 175 of 1989 were the same and, therefore, the appellant cannot be granted any relief in the present suit is not tenable. Mrs. Mehta contended that assuming that the same reliefs claimed in the earlier suit overlapped in the subsequent suit, then also the principle of res judicata will not apply inasmuch as the appeal against the judgment and decree in the earlier suit being Special Civil Suit No. 175 of 1989 is pending before the District Court, Bharuch

and since there is no final decision and, therefore, section 11 of the Civil Procedure Code does not apply. To substantiate her contention, reliance has been placed on the decision of this Court in the case of Parshottam Prabhudas Vs. Bai Moti, AIR 1963 Gujarat 30.

11. Mr.P.G.Desai, learned advocate appearing for the respondents in Appeal From Order No. 573 of 1998 on the other hand, after inviting my attention to various orders passed in number of proceedings, submitted that the appellant- Laxmanbhai Khodabhai has throughout made an unsuccessful attempt with a view to see that the respondent no.1 who is the real owner of the suit land cannot dispose of the same.In the submission of Mr. Desai, the claim of the appellant-Laxmanbhai with regard to his tenancy and possession of the suit land has been virtually decided against him and he is not entitled to challenge the execution of the registered sale deed between the respondent no.1 on one side and the respondents no. 2 and 3 on the other side. Mr. Desai pointed out that the suit being Special Civil Suit No. 243 of 1999 instituted by Achar Saga Haji Sama for specific performance is at the instance of the appellant Laxmanbhai Khodabhai. The so-called agreement of sale alleged to have been executed by the respondent no.1 Kavasji in favour of Acharbhai is sham and bogus.

12. Mr.B.S.Patel,learned advocate appearing for the respondent Achar Saga Haji Sama in Appeal From Order No. 261 of 1999 as well as Civil Revision Application No. 1026 of 1999, while justifying the order passed below applications Ex. 5 and 64,submitted that the trial court was justified in passing the order directing the appellants to maintain status quo with respect to the suit land till the hearing and disposal of the suit for specific performance filed by him. In the submission of Mr. Patel, it is not open for this Court to disturb the conclusion arrived at by the trial court who, after considering the facts and circumstances of the case, granted interim relief directing the parties to maintain status quo. He has relied upon the decision of the Supreme Court in the case of Dalpatkumar Vs. Prahladsingh, (1992)1 SCC 719.

13. Having gone through the relevant documents on record and having considered the submissions advanced by the learned advocates for the parties and in normal circumstances, I could have directed the trial court to expedite the hearing of the suits by consolidating the same. When the proceedings involving number of disputes which can only be decided by leading evidence, normally,

the appellate court will not venture to decide the same. But in view of the fact that the parties have initiated proceedings right from 1988 and they are still fighting the same and God knows for how many more years hereafter they will fight, in my opinion, with a view to prevent misusing court machinery, a finality to the litigation must come. While narrating the facts, I have given all details about the proceedings initiated by the parties till date.

14. Laxman Khoda has filed number of suits playing the same record that he is the tenant and in possession of the suit land and, therefore, his possession is required to be protected. Once the aforesaid claim is rejected, one just cannot repeat the same by changing prayers in different suits. With the ingenuity of lawyer, prayers can be moulded in such a way as to avoid from being branded as res judicata. Keeping this aspect in mind, let us see the findings recorded in different proceedings as well as certain undisputed facts.

15. The original owner of the suit land Ratansha Hormanji expired on 10.7.1987 and he executed a will dated 4.4.1987 with respect to all his properties including the suit land in favour of Kavasji, namely the appellant no.1 in Appeal From Order No. 261 of 1999. It is also not in dispute that the said will is registered at serial no.124 on 8.4.1987 before the Sub-Registrar, Rajpipla. Mutation entry was also made in village form no. 6 at serial no. 1550 dated 15.7.1987. By virtue of the said will, Kavasji is in possession of the said suit land. It is also not in dispute that Kavasji sold the suit land by a registered sale deed dated 16.4.1988 in favour of appellants no. 2 and 3 of Appeal From Order No. 261 of 1999. The said sale deed was registered at serial no. 277 dated 16.4.1998 before the Sub-Registrar, Jhagadia for a sale consideration of Rs. 4 lacs.

16. With the aforesaid undisputed facts, let us see the initiation of proceedings. Civil Suit No. 14 of 1988 was filed in the Court of learned Civil Judge, Junior Division, Valia by Kavasji against Abdul Gafur Abdulgani Pathan who was trying to interfere with the possession of the aforesaid land in question and with a view to protect his possession, wherein Kavasji had also applied for temporary injunction during the pendency of the suit. The said suit was initiated on 11.6.1988. It is not in dispute that the learned Civil Judge, Junior Division, Valia granted ad-interim relief and the same continued till the final disposal of the said suit. In the said suit, the defendant Abdul Shakur, in his written

statement, clearly stated that the land in question was rented by the original owner in favour of one Laxman Khoda vide rent note dated 1.12.1985. As stated above, in spite of the fact that the learned Civil Judge, Junior Division, Valia granted ad-interim relief in Civil Suit No. 14 of 1988 filed by Kavasji, Laxman Khoda filed another suit being Special Civil Suit No. 82 of 1989 in another Court i.e. in the Court of learned Civil Judge, Senior Division, Bharuch on 6.5.1989 against Kavasji and prayed for injunction without disclosing the fact of pendency of Civil Suit No. 14 of 1988. Kavasji appeared in the said suit and filed his written statement and objections at Ex. 12. After hearing the parties, the learned Civil Judge, Senior Division, Bharuch vacated the injunction on 21.9.1989. Laxman Khoda carried the said order before this Court by filing the Appeal From Order which is not in dispute; that the said Appeal From Order was with withdrawn. It is also not in dispute that Laxman Khoda withdrew the Special Civil Suit No. 82 of 1989 with a view to file fresh suit on 9.10.1989. Though Laxman Khoda filed another suit being Special Civil Suit No. 175 of 1989, the fact remains that he failed to obtain injunction in his first suit and, therefore, the finding recorded by the trial court below Ex. 5 is binding to the parties especially when he failed to obtain any decision from this Court in the Appeal From Order.

17. Now, in the second suit also, i.e. in Special Civil Suit No. 175 of 1989 filed in the Court of learned Civil Judge, Senior Division, Bharuch, he applied for temporary injunction. Since he had changed the relief clause to suit his purpose, the learned judge, in spite of the fact that he had refused injunction in the earlier suit, granted temporary injunction which continued till the disposal of the suit. It appears that the said suit and the Regular Civil Suit No. 14 of 1988 filed by Kavasji, renumbered as Regular Civil Suit No. 560 of 1991 were tried together and by judgment and order dated 9.12.1996, the suit filed by Laxman Khoda came to be dismissed and the suit filed by Kavasji was decreed. Thus, by the judgment and decree passed by the competent court, the rights of the parties are decided wherein a finding is recorded that Laxman Khoda was not in possession of the land and the rent note was found to be bogus and concocted. Therefore, the permanent injunction in favour of appellant no.1 Kavasji was granted. Needless to say that Laxman Khoda filed two appeals being Regular Civil Appeals Nos. 2 and 3 of 1997 before the District Court, Bharuch where he had applied for injunction restraining the appellant no.1 Kavasji from

disturbing his possession. The lower appellate court directed the parties to maintain status quo. It was contended by Mrs. Mehta that in spite of the order of status quo passed by the District Court, Bharuch, the sale deed in question has been executed between the parties and, therefore, there is a breach of the order passed by the District Court. Now, the order of status quo is required to be understood with respect to the prayer made before the Court. Laxman Khoda made the only prayer about his possession. As per the finding recorded by the trial court, he was not in possession of the land in question and since Kavasji was found to be in possession, the so-called order of status quo was meaningless. In absence of any relief restraining Kavasji from alienating, transferring or selling the suit property in favour of a third party and in absence of any order thereon, in my opinion, there does not appear to be any breach of the order committed by Kavasji. In any case, when the appellants no. 2 and 3 of the Appeal From Order No. 261 of 1999 who are agriculturists purchased the suit land from the appellant no.1 Kavasji on 16.4.1998, Laxman Khoda again filed Special Civil Suit No. 108 of 1998 praying for quashing and setting aside the registered document of sale deed dated 16.4.1998 and also applied for injunction restraining the appellants of Appeal From Order No. 261 of 1999 from transferring, alienating or selling the suit property in favour of anybody. The learned Second Joint Civil Judge, Senior Division, Bharuch on 11.11.1998, rejected the application Ex. 5 by holding that he was never in possession of the suit property. The said order is under challenge by way of Appeal From Order No. 573 of 1998. Thus, the trial court has, on more than one occasion, rejected the claim of Laxman Khoda that he is in possession of the suit land.

18. As stated above, the prayers can be moulded to suit one's own purpose, but in absence of prima facie case, no court can grant relief as prayed for by the parties. In the instant case, Laxman Khoda is claiming tenancy from the deceased Ratansha by virtue of the rent note. It is not in dispute that the said rent note Mark 3/2 does not bear the signature of Ratansha. Therefore, the claim of Laxman Khoda being the tenant on the basis of the rent note is without any basis. Similarly, his claim that he has got first right to purchase the suit land on the basis of the rent note also does not appear to be proper and justifiable. There cannot be any dispute with respect to the principle laid down by this Court in the case of Parshottam Prabhudas (supra) that a judgment against which an appeal has been filed cannot be

res judicata. Where, therefore, the property in dispute was the subject matter of previous litigation between the parties and the matter was still pending in appeal, subsequent suit between the parties in respect of the same properties is not barred by res judicata. However, apart from res judicata, on the basis of undisputed facts on record, it can safely be concluded that the appellant Laxman Khoda is not entitled to the relief claimed by him.

19. In absence of any tenancy created by the deceased Ratansha in favour of Laxman Khoda, it is not possible for me to accept the contention of Laxman Khoda that he is entitled to have first preference of purchase of the land in question. In that view of the matter, the decision of the Supreme Court in the case of Bai Dosabai (supra) and Nirmala Bala Dasi (supra) will be of no assistance to the appellant Laxman Khoda.

In this view of the matter, I see no merits in Appeal From Order No. 573 of 1998 and is dismissed.

20. As far as Appeal From Order No. 261 of 1999 and Civil Revision Application No. 1026 of 1999 filed by Kavasji and other two are concerned, the learned trial judge has failed to appreciate and consider that the sale deed dated 16.4.1998 is a registered sale deed whereby the appellants no. 2 and 3 paid the amount of sale consideration of Rs. 4 lacs by demand drafts. In view of the judgment and decree passed by the competent court, the appellant no.1 Kavasji was declared owner as well as in possession of the suit land and in absence of any order of injunction, he was entitled to sell the properties in question. Against this, the entry of Acharsaga Haji Sama in the field appears to be quite unusual. He is also claiming to be an intending purchaser of the suit lands on the basis of the agreement of sale alleged to have been executed on 12.12.1997 by the appellant Kavasji in his favour. Even though the registered sale deed was executed on 16.4.1998, for the reasons best known, he has not initiated any proceedings immediately thereafter, but surprisingly he filed a suit on 17.11.1998 i.e. after the rejection of application Ex. 5 on 11.11.1998 in Special Civil Suit No. 108 of 1998. It was contended by Mr. Desai that the Special Civil Suit No. 242 of 1998 was instituted by Achar Saga Haji Sama at the instance of Laxman Khoda who had realised that it was not possible for him to succeed in the litigation. Without expressing any opinion with regard to the said allegation, I find that the manner and the circumstances in which the suit was instituted by

Achar Saga Haji Sama seven days after the rejection of Ex. 5 in Special Civil Suit No. 108 of 1998 filed by Laxman Khoda would certainly raise doubts. It is too early for me to express any opinion about the genuineness of the agreement of sale as the same can be decided in the trial court. In view of the fact that Achar Saga Haji Sama who claims to have paid Rs. 50,000/- in cash under the agreement of sale is also a fact not free from suspicion. Much have been said about the genuineness of the agreement of sale. However, this being a matter of evidence, I do not think it necessary to express any opinion about the same. Thus, by ignoring the registered sale deed and accepting the agreement of sale which is not free from doubt, in my opinion, the trial court has not properly exercised the discretion vested in him and, therefore, interference is necessary. However, with a view to protect the interest of the respondent Achar Saga Haji Sama after imposing certain conditions, if the appellants no.2 and 3 are allowed to continue the construction on the suit land, in my opinion, the interest of justice would be served.

21. In the result, Appeal From Order No. 261 of 1999 and Civil Revision Application No. 1026 of 1999 are allowed. The judgment and order dated 5.5.1999 passed below Ex.5 in Special Civil Suit No. 243 of 1998 and the judgment and order dated 23.6.1999 passed below Ex. 64 in Special Civil Suit No. 243 of 1998 are quashed and set aside. The appellants no. 2 and 3 of Appeal From Order No. 261 of 1999 are entitled to construct on the suit land. However, the same shall be subject to the result of the suit and also on condition that they shall deposit Rs. 4 lacs (Rs. Four lacs only) in the trial court within four weeks from today. On such amount being deposited, the trial court shall invest the same in any nationalised bank for a period of five years subject to the result of the suit. The trial court shall hear and decide all the suits as expeditiously as possible and shall make an endeavour to complete the same within a year from today.

Rule is accordingly made absolute in Civil Revision Application No. 1026 of 1999.

Mrs. Mehta as well as Mr. B.S.Patel pray to stay the operation of the order to enable them to move the Apex Court. Considering the facts and circumstances of the case, this order is stayed for a period of four weeks from today.

No order as to costs.

sonar/-